

## **REMARKS**

### **I. Background**

The Office Action, mailed June 28, 2007, considered and rejected claims 1, 3, and 5-20. By this paper, claims 1 and 12 have been amended.<sup>1</sup> Accordingly, claims 1, 3, and 5-32 are presented for the Examiner's consideration in light of the following remarks.<sup>2</sup>

### **II. Rejections on the Merits**

#### **A. Rejection Under 35 U.S.C. 102(b)**

Claims 1, 3, 5, 7, 11, 12-14, 16, and 18 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,036,699 to Andreas et al. (*Andreas*).<sup>3</sup> Applicants respectfully traverse.

The Office Action asserts that *Andreas* discloses "a suture cutting blade 24 positioned on the housing" (Office Action, page 2). In support of this assertion, the Office Action cites the cutting blade 24 for a surgical punch assembly 10 as "a suture cutting blade," as recited in claims 1 and 12, and the guide body 402 as "a housing," as recited in claims 1 and 12.

However, Applicants respectfully submit that the surgical punch cutting blade 24 is not "positioned on the housing," as recited by claims 1 and 12, because the cutting blade 24 is disclosed as a component of a completely different device. *Andreas* discloses "a suture applying device 400" and "a surgical punch assembly 10" (*Andreas* col. 10, line 41 and col. 12, lines 55-57). Therefore, the Office Action is citing a component of the surgical punch assembly 10 as being a component of an entirely different device, the suture applying device 400.

The M.P.E.P. requires that "The identical invention must be shown in as complete detail as is contained in the ... claim" (§ 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226,

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<sup>1</sup> Support for the claim amendments can be found throughout the specification.

<sup>2</sup> Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

<sup>3</sup> Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Furthermore, "[t]he elements must be arranged as required by the claim (*Id.*). Applicants respectfully submit that the surgical punch cutting blade 24 is not "positioned on the housing," as recited in claims 1 and 12. Therefore, *Andreas* does not disclose this claim limitation.

Additionally, claim 1 recites that "the suture can be drawn across the blade to sever the suture." However, *Andreas*' cutting blade 24 is not used in conjunction with the suture applying device 400. In fact, *Andreas* does not disclose, teach, or suggest anything about "sever[ing] the suture," as recited in claim 1. Rather, *Andreas* merely discloses the use of a cutting blade 24 in conjunction with a surgical punch assembly 10 to shear tissue (*See Andreas* col. 12, lines 44-50). Alternatively, *Andreas* discloses using a distal cutting blade 54 to "engage[] the interior of the vessel wall 30 to cut the plug 44 of tissue as it telescopically engages the distal end 32 of the hollow sleeve" (*Id.* at col. 12, lines 61-63). Therefore, although cutting blade 24 may be a cutting blade, Applicants respectfully submit that it is not "a suture cutting blade," as recited in claims 1 and 12.

Furthermore, the Office Action asserts that *Andreas* discloses "a needle movable within a needle lumen associated with the shaft and that extends toward a proximal end of the housing" (Office Action, page 2). In support of this assertion, the Office Action cited needle 410 and needle lumen 420. However, claims 1 and 12 recite that "the needle [has] a tapered tip ... initially oriented toward the distal end of the housing."

Applicants respectfully submit that needle 410 does not have "a tapered tip ... initially oriented toward the distal end of the housing," as recited in claims 1 and 12. Rather, *Andreas* discloses that:

Prior to use, the suture applying device 400 will be in the configuration illustrated in FIGS. 1 and 2A. That is, the needle shaft 404 will be distally positioned within the guide body 402 and needle sheath 426. In particular, the tips of needles 412 will lie just at the guide tip 406 so that they may be easily advanced through the arterial tissue surrounding the arteriotomy. That is, the tips of the needles will be generally retracted within the guide tip 406.

(*Andreas*, col. 10, lines 24-31). Thus, *Andreas* discloses that the "[p]rior to use ... the tips of the needles 412 will lie just **at the guide tip 406.**" The guide tip 406, as shown in FIGS. 1 and 2A, is distal to the distal end of the guidebody 402. Therefore, the tips of the needles 412 are initially

oriented toward the **proximal end** of the guidebody 402 not "toward the **distal end** of the housing," as recited in claims 1 and 12. As a result, *Andreas* does not disclose this limitation.

Consequently, *Andreas* does not disclose each and every limitation of claims 1 and 12. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 3, 5, 7, 11, 12-14, 16, and 18 under Section 102.

**B. Rejections Under 35 U.S.C. § 103(a)**

Claims 6, 8, 9-10, 15, 17, 19, and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Andreas*, as applied above, in view of U.S. Patent No. RE 22,857 to Ogburn (*Ogburn*). Applicants respectfully traverse.

The Office Action asserts that "Andreas et al. discloses the invention substantially as claimed (Office Action, page 4). However, as shown above, *Andreas* does not disclose "a tapered tip ... initially oriented toward the distal end of the housing," as recited in claims 1 and 12. Applicants respectfully submit that the Office Action has not cited, nor can Applicants find, any portion of *Andreas* that teaches or suggests this limitation. Consequently, *Andreas* does not disclose, teach, or suggest each and every limitation of claims 1 and 12.

Applicants respectfully submit that the Office Action has not cited, nor can Applicant find, any portion of *Ogburn* that teaches or suggests this limitation. Consequently, *Andreas* in view of *Ogburn* does not disclose, teach, or suggest each and every limitation of claims 1 and 12. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 6, 8, 9-10, 15, 17, 19, and 20 under Section 103.

### **III. Summary and Conclusion**

In the event that the Examiner finds any remaining impediments to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney.

Dated this 28<sup>th</sup> day of September, 2007.

Respectfully submitted,

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